



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

AUG 18 2004

Paper No. x

In re Application of
Michael E. Zoeckler
Application No. 09/818,023
Filed: March 27, 2001
Attorney Docket No. 7137 CIP1

:
: DECISION ON PETITION
:
:

This is a decision on the petition filed by facsimile transmission on March 1, 2004 by which petitioner requests that the time for filing a reply brief in response to the examiner's answer dated December 1, 2003 be restarted. No fee is required for the petition.

The petition is dismissed.

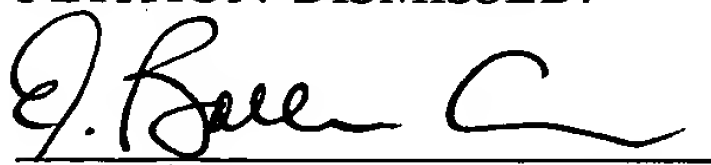
It appears from the record that a change of correspondence address was filed in this application on February 26, 2004, one day after receipt of a copy of the examiner's answer that was facsimile transmitted to counsel by the examiner. While it is appreciated that late receipt of Office correspondence can provide a basis for restarting the period to reply to that correspondence, as for example in the situations discussed at MPEP § 710.06, a part of the showing that is necessary to have the reply period restarted includes is that petitioner provide evidence establishing late receipt of mailed Office correspondence **at the correspondence address of record**. Petitioner has not demonstrated that fact, and based upon the current record, it appears that the correspondence address of record had changed prior to the mailing of the examiner's answer, but that petitioner never notified the Office of that fact. MPEP § 601.03 states:

"Where an attorney or agent of record ... changes his or her correspondence address, he or she is responsible for promptly notifying the U.S. Patent and Trademark Office of the new correspondence address (including ZIP code)."

As far as can be determined from the record, the failure to receive the examiner's answer in a time frame that would have permitted petitioner to file a reply brief within the time set by 37 CFR 1.193(b)(1) for doing so appears to have been caused by a failure to provide a current correspondence address. There is, therefore, no basis upon which to restart the time for filing a reply brief. Accordingly, the petition cannot be granted.

The application is being brought to the attention of the Supervisory Patent Examiner in Art Unit 3721, who should have an indication placed in the record that the reply brief filed on March 16, 2004 will not be entered or considered because it was not timely filed. The application should thereafter be forwarded to the Board of Patent Appeals and Interferences.

PETITION DISMISSED.


E. Rollins-Cross, Director
Technology Center 3700

Womble Carlyle Sandridge & Rice, PLLC
P.O. Box 7037
Atlanta, GA 30357-0037